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No. 84-1840

In The
Supreme Court of the United States
October Term, 1984

LONNIE M. WOODRUM,
Petitioner,

v.

SOUTHERN RAILWAY COMPANY,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

Respondent has steadfastly denied that its claim agent Bill Piper procured the perjury of Robinson.

Even though this case was decided on Summary Judgment, it was not the usual setting for Summary Judgment. Rather the trial courts decision dealt with statutory construction, with its own jurisdiction, and with whether the award of a Public Law Board was "*indisputably* without foundation in fact." Each of these is more an issue of law than of fact.

A brief chronology is in order.

(1) The meeting at the Hilton occurred on March 15, 1978.

(2) The hearing on the property at which Robinson allegedly lied occurred on May 16, 1978. The alleged lies had to do with Woodrum's conduct and for that reason he well knew whether the statements were lies. Woodrum was discharged for disloyalty, a proper ground for discharge under the collective bargaining agreement.

(3) The Public Law Board upheld Woodrum's dismissal on July 30, 1979.

(4) On May 20, 1980, Robinson (who now had employed Attorney Burge in his own F.E.L.A. case against Southern) gave an affidavit that he had lied at the hearing and that Mr. Piper had procured those lies. Woodrum admits that he knew of the recantation at this time.

(5) Piper died in August 1980.

(6) This law suit was filed on June 5, 1981—more than three years after Woodrum "knew" that Robinson had lied, nearly two years after the Public Law Board decisions, and more than one year after Woodrum admits that he knew everything.

There is no allegation that the original hearing conducted "on the property" was not properly conducted under the terms of the applicable collective bargaining agreement. The record demonstrates that petitioner was unrestricted in his proof and that he was afforded an opportunity to disprove the allegations of Mr. Robinson at the hearing.

The record also shows that the proceeding before the Public Law Board was conducted in accordance with its usual procedures and that it was composed as it customarily is—i.e. by one representative of labor, one of management, one neutral. There was no objection to the composition of the Board. To date petitioner has made no allegation that any member of the board was guilty of fraud or corruption.

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REASONS FOR DENYING THE WRIT

INTRODUCTION

Contrary to petitioner's contention this case does not fall within any of the categories set forth in Supreme Court Rule 17 governing review or certiorari.

Petitioner has not cited a case from any other circuit in conflict with the decision in this case. He says there

is a conflict between this case and other cases applying the "indisputably without foundation in fact" rule, but in fact, this opinion applied that rule to this case. In all respects the Eleventh Circuit correctly applied well settled principles of law and there is no matter of sufficient gravity presented here to merit grant of the writ.

I.

The District Court lacked subject matter jurisdiction to review the Public Law Board decision on the grounds alleged by Petitioners.

Employment is generally at will with the employee having no recourse for his firing whether just or unjust. The Railway Labor Act was designed to reduce labor-management tensions that existed in the railroad industry. The original act provided for some review of management decisions. The machinery broke down because of delay caused by judicial review at the District Court level. Congress decided in 1966 to speed up the process by providing for substantial finality of the Public Law Board decisions with District Court review only upon narrow grounds.

It is well recognized that the scope of judicial review under the act is "among the narrowest known to the law" *Union Pacific v. Sheehan,* 439 US 89, 91-94, 99 S Ct 399, 401-2, 58 L.Ed.2d 354 (1978). The grounds stated in the act are

(1) "failure of the division to comply with the requirements of this chapter,"

(2) "for failure of the order to conform or, confine itself, to matters within the scope of the division's jurisdiction, or"

(3) "for fraud or corruption by a member of the division making the award"

A fourth ground recognized by several Court of Appeals decisions is that review may be had if the award is "*actually and undisputably* without foundation in reason and fact."

Both the District Court and the Court of Appeals considered each of these grounds and found each nonexistent.

As to the ground 3 both courts found that the language restricted review to fraud by a member of the tribunal as opposed to fraud by a party. This is what the language clearly says. The differences in this language and that of other similar statutes which give broader grounds of review merely show that Congress consciously selected the narrower language. *Merchants Dispatch v. System Federation,* 447 F Supp 799 is in agreement. Only fraud by a member of the division, as opposed to fraud by a party, was intended to be reviewable and there was no evidence or even allegation that the member knew of the fraud.

Nor did either court accept the notion that fraud by the railroad party should be imputed vicariously to the railroad representative on the board. It is well recognized that the Public Law Board is composed of two advocates and only one "neutral". *Stanton v. Delta Air Lines, Inc.* 669 F.2d 833, 837-8, (1st Circ. 1982); *Jones v. St. Louis - San Francisco Railway Co.* 728 F.2d 257, 260 (6th Circ. 1984). This partiality is fully expected and does not constitute fraud or corruption. In the absence of proof that the railroad representative actually knew of

the fraud (and there is no such proof here) knowledge of fraud by the party will not be attributed to the representative. See *Pitts v. National Railroad Passenger Service,* (N.D. Ill. 1985) #84 C 6486 decided March 8, 1985.

Regardless of whether ground 4 is simply a restatement of ground 2 or whether it is actually a fourth ground of review, it was considered by both the trial court and by the Court of Appeals.

Both courts determined that regardless of the effect of the recantation there was substantial evidence which continued to support the board's decision and which kept it from being "actually and indisputably without foundation in fact or law". For example, the undenied appearance of Mr. Woodrum's name and phone number on the back of Mr. Burge's business card and the giving of that card to Robinson shows more than testimony the role that Woodrum was playing for Burge.

In addition the court rejected the notion that recanting of testimony obliterates that testimony. The totality of the fact situation is summarized by the Court of Appeals showed an ample basis to believe that Robinson was telling the truth the first time. Furthermore, the testimony of Mr. Piper was never recanted and remains as substantive evidence.

All of this remains ample to support a finding that the award was not "indisputably without foundation in fact or law."

II.

Federal R. Civ. P. 60 (b) does not afford a basis of review of the Public Law Board decision.

F.R.C.P. 60(b)(3) seems to give a district court the authority to review a judgment obtained by "fraud . . . of an adverse party" but it "shall be made within one year of the judgment, order or proceeding was taken or entered." Yet, this action was not taken within one year of the Public Law board award or even within one year of the date he admitted "discovering" the fraud. For this reason Woodrum denominated his action as an "independent action".

Both the trial court and the Court of Appeals ruled that neither 60(b) in general nor the provision for independent actions contained in 60(b) were meant to give a district court jurisdiction over matters which it did not otherwise have. There is ample authority for this proposition cited by the Court of Appeals at Petitioner's App. 17. Both the trial court and the Court of Appeals recognized that Rule 60(b) did not authorize a district court to engraft an additional ground of review upon a congressional scheme allowing review only for specified grounds.

III.

There is no cause of action under 45 USC § 60.

45 USC § 60 voids any device intended to prevent employees of a common cause from furnishing information "*as to the facts incident to the injury or death of any employee*". It is a criminal statute and must be strictly construed. Woodrum was not disciplined for furnishing

information "as to the facts incident to the accident." The Court of Appeals correctly determined that there was no evidence even in Robinson's second version of the facts that § 60 was violated.

The Court of Appeals did not reach the statute of limitations problem on which the trial court ruled. Yet it is inescapable that if Southern violated § 60 it did so the moment it caused the hearing to be scheduled and that this occurred beyond the three year statute of limitations period. If it was the lying of Robinson that created the cause of action this occurred the moment Robinson lied because Woodrum had to know that Robinson's testimony about Woodrum's own conduct was false. This too falls outside the three year limitation period.

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CONCLUSION

For the foregoing reasons, the Petition for Certiorari should be denied.

Respectfully submitted,

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